

EXHIBIT 11

Q-1'09 Updated
Expert Report on
Take Shape for Life, a Division
of Medifast, Inc. (NYSE: MED)

Robert L. FitzPatrick

Submitted to: Fraud Discovery Institute

Re: Analysis of Business Models and Practices of
Medifast and *Take Shape for Life*; Review and
Analysis of Q-1'09 Financial Disclosures;
Implications for Medifast Shareholders

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Submitted: _____
Robert L. FitzPatrick
May 10, 2009

The financial disclosures released by Medifast, Inc. on April 29, 2008 for the company's activities during the first quarter of 2009 further confirm the conclusions I presented in the earlier, comprehensive report on this company.¹

The company's performance and the fate of shareholders depend on the marketing of an "endless chain" income proposition to consumers. The growth of the "multi-level marketing" division, *Take Shape for Life*, continues to be the only factor for significant revenue growth for Medifast. This sector depends entirely upon geometric expansion of its "coaches," that is, consumers who are persuaded to invest in the implausible income proposition.

Core Business in Decline

Excluding revenue gained from the selling of its endless chain income scheme, Medifast revenue *declined* by \$.6 million or 4% comparing Q-1'08 results for the same period of '09. This is in keeping with the trend of the meal replacement industry. Medifast's decline occurred despite opening additional corporate clinics and the introduction of a franchise model.

2008

| | |
|--|----------------|
| Medifast Total Revenue at End of Q-1'08: | \$25.2 million |
| <i>Take Shape for Life</i> Revenue at End of Q-1'08: | \$9.8 million |
| Company Revenue Excluding TSFL: | \$15.4 million |
| TSFL Revenue as % of Total Medifast Revenue: | 39% |

2009

| | |
|--|----------------|
| Medifast Total Revenue at End of Q-1'09: | \$33.7 million |
| <i>Take Shape for Life</i> Revenue at End of Q-1'09: | \$18.9 million |
| Company Revenue Excluding TSFL: | \$14.9 million |
| TSFL Revenue as % of Total Medifast Revenue: | 56% |

Redefinition as Peddler of Income Opportunity

As explained in the earlier report, Medifast has *redefined* itself from a diet and nutrition company into merely another variation of a multi-level marketing company, a mini-Amway. Its main and its true product is the sale of an "income opportunity" not meal replacements. In the classic multi-level marketing model, consumers are induced to pay fees, buy products and purchase marketing materials in the expectation of earning profits. The profits are based not from personal retail sales but from the purchases and sales of a "downline" of other recruits. The payment plans claim each new recruit can gain income from an endless chain of others whom they recruit to also invest. This income scheme can be recognized as the classic "robbing Peter to pay Paul." The Medifast scheme utilizes diet products as the vehicle for disguising and facilitating the money transfer. Without the continuous infusion of new investment capital from more independent distributors (called coaches), the company would collapse.

Medifast now has more in common with any of the companies that sell an income scheme based on purchasing inventory ranging from soap to vitamins and then recruiting others to do the same, than it does with companies such as Weight Watchers and Nutrisystem that actually sell diet products to the public.

¹ <http://www.pyramidschemealert.org/PSAMain/resources/Expert%20Report.Medifast.pdf>

Regulatory and Legal Minefields

The shift from selling diet products to selling an income proposition to consumers that is based on *continuous expansion* of coaches in a *contracting* marketplace has profound implications for Medifast shareholders. Extraordinary legal and regulatory issues arise from this transformation from a diet industry company to multi-level marketing, peddling an income promise.

A similar publicly traded company, *Your Travel Biz.com*, which charges consumers fees to become “travel agents” and then rewards them based on the recruitment of more “agents,” has been sued by the California Attorney General as a “gigantic pyramid scheme.”² Amway itself is the target of an enormous class action suit led by two of the country’s premier class action law firms. The suit claims Amway is an endless chain scheme and that the vast majority of all new recruits, called “independent business owners”, who are promised income based on recruiting other IBOs are “doomed by design” to lose money.³ Government regulators in England recently sought to close down Amway in that country “in the public interest” based on the revelations of false income claims and financial losses by tens of thousands of British consumers who had invested as Amway “independent business owners.”⁴

The Federal Trade Commission had been notably lax in recent years under the Bush Administration in enforcing anti-fraud laws against pyramid selling schemes. However, this policy may be reversed in the coming years under the new Administration. The Direct Selling industry has focused nearly all its lobbying and political contributions on the minority party.

Limits on “Unlimited” Recruiting

Setting aside legal and regulatory issues, from a purely economic perspective the shift to multi-level marketing inextricably ties Medifast’s continued growth to recruiting an ever-expanding base of “coaches.” While a theoretical potential for market expansion of Medifast, based on gaining market share from competitors, might be viable, the continuous expansion of diet coaches is not.

In the April 29 press release, Medifast acknowledged that growth now depends on recruiting more coaches.

Growth in revenues for the segment was driven by increased customer product sales as a result of an increase in active health coaches. The number of active health coaches during the first quarter increased to approximately 4,000 compared with 2,200 during the period a year ago, an increase of 82% and up from 3,400 at the close of 2008.

The inherent restraints on Medifast’s own growth are revealed by projecting the model forward just 10 years. To sustain the growth for 10 years, which the company has reported this past year, the number of coaches would expand from 4,000 to 1.6 million!

² <http://ag.ca.gov/newsalerts/release.php?id=1596>

³ Jeff Pokorny and Larry Blenn on behalf of themselves and those similarly situated, Plaintiffs, v. Quixtar, Inc., James Ron Puryear, Georgia Lee Puryear and World Wide Group, L.L.C; Britt Worldwide L.L.C., American Multimedia Inc., Britt Management, Inc. Bill Britt and Peggy Britt, Defendants, Case No. C 07 0201, United State District Court, Northern District of California, Class Action.

⁴ <http://www.pyramidschemeaalert.org/PSAMain/news/AmwayCaseAppealed.html>

To put the limits on the model into a more realistic context, for *Take Shape for Life* to reach the size of its nearest and most similar competitor, Nutrisystem, it would need 160,000 “coaches.” Whom would these coaches sell to or recruit? How many potential customers would be available for the coaches in a competitive marketplace? These types of simple projections reveal the trickery of selling “endless” chain income schemes and why they have become the targets of individual and class action lawsuits by “failed” consumers, why they were outlawed in China as frauds, and why the country of England sought to close down the veritable icon of this business model, the Amway Corporation, on the grounds of large-scale deception.

The coach recruitment business is a distinct activity that is essentially unrelated to the meal replacement industry. Its driving incentive is the sale of *income opportunity* for prospective coaches.

Industry trends show that the meal replacement market is contracting.⁵ However, as recent revelations of consumer and investor fraud have shown, the market for selling a bogus income proposition in the midst of the Recession is expanding.

Questions for the SEC

The sales of an endless chain income proposition has extraordinary implications for disclosure and transparency. With Medifast’s fate now clearly dependent on the selling of this type of income proposition to consumers, shareholders and the SEC ought to know much more about the “coaches” whose fate and fortunes are the lynchpin of the company’s future. On this subject, Medifast is *silent and secretive*.

For example,

- Medifast offers no information on its website or in SEC filings about the actual number of coaches recruited in any time frame or their dropout rates. It only offers a count of “active” coaches at the end of a quarter. Therefore, the churn rate, if there is one, is not disclosed.
- The actual number of retail customers per “coach” is also not disclosed.
- Similarly, the company does not disclose the percentages of incomes of coaches that are based on *personal* retail sales versus “bonuses and overrides.”
- The average income of *all* coaches, active and inactive over and extended time, is not reported to shareholders or to prospective coaches.
- The percentage of annual revenue sourced directly from the coaches (their own fees and personal purchases) is not disclosed.
- Perhaps most important, regarding the coaches’ profitability, the shareholders do not know how many coaches are in the various levels of the sales hierarchy and the proportions of commission payments made to each of the various levels of coaches. The *Take Shape for Life* pay plan allocates commissions to 10 levels of recruiters, who collectively gain more *per sale* than the person actually making a sale. If most of

⁵ Q-1'09 disclosures by diet industry giants Weight Watchers and Nutrisystem report year to year respective revenue declines of 11% and 25% and respective income drops of 18% and 37%. Medifast's anomalous rise in revenue, especially during a general economic decline, is a red flag of possible malfeasance.

the commissions are transferred to the few at the top, the thousands of newly recruited coaches are condemned to a futile struggle to get to the top, where only a few can ever be positioned.

Two Bucks a Day Peddled as “Unlimited Income”

From the current disclosure, Medifast revealed that it increased revenue in the *Take Shape for Life* segment by \$9.1 million between the end of Q-1'08 and the same period in '09. It also reported that the total of “active coaches” at the end of this time period increased by 1,800. This indicates that the total new revenue generated for each new coach is approximately \$5,000 ($\$9.1\text{ million} \div 1,800$) That total *revenue* figure per new coach reveals the absurdity of claims about “unlimited” *incomes* available to new coaches.

Medifast’s website presents charts showing the potential for \$8,000 and \$20,000 *incomes per month*. Yet, with each new coach equating to just \$5,000 in new revenue, the *rewards* to those coaches must be minimal.⁶ 50% of all revenue is paid to the entire network of coaches in commissions but at least 70% of this commission is allocated to 10 levels of recruiters, not the salesperson at the bottom. So the actual *income* available to the newest coaches based on the new revenue gained is less than \$15 a week!

These per capita revenue and income figures presented in the Medifast press release – as small as they are and misleading in their incompleteness – are likely even more bogus. They are based only on the total *current* count of coaches at the end of the quarter, not the *cumulative* count of coaches that were churned through the company during the entire 12-month period. That truer number would reduce the per-coach revenue and income figures further.

Capital Investments Versus Retail Sales

Medifast does not reveal how much of the new revenue came directly out of the pockets of the new coaches, rather than from any retail sales they generated in the open market.

- Each new coach can pay as much as \$300 just to gain the right to get overrides from recruits.
- The *Take Shape for Life* meal replacement products cost about \$300 per month. Presumably most coaches are also buying the products for their own use and to give away as samples.
- Additionally, they must buy marketing materials from the company.

Fees, inventory purchases and marketing investments by the coaches themselves could, therefore, be a substantial portion of total *Take Shape for Life* revenue before any actual sales are ever made.

Questionable Legality

In the earlier report, I explained in detail why I thought *Take Shape for Life* was in jeopardy of violating California’s law against endless chain schemes. That law is cited in

⁶ The earlier report presented a simple mathematical calculation that included the total number of coaches, and the total commissions paid (50% of TSFL revenue). It revealed that only a tiny percentage of coaches could possibly earn even a sustainable income equivalent to a minimum wage job.

the current class action suit against Amway, on which *Take Shape for Life* is modeled. It was also used as the basis for a recent FTC action against another multi-level marketing company, similar to *Take Shape for Life*, called BurnLounge. That company charged consumers fees to become "moguls" with the right to sell "downloaded music" through the company and then to receive rewards when they recruited other mogul/recruiters.⁷

The California law seeks to ban the use of the endless chain incentive for selling goods or for gaining financial investments.

Other states describe the endless chain incentive as a scheme in which the value of a product or the promised returns on investment depend on the "future action" (recruiting) of others. In those cases, the schemes are viewed as purveyors of unregistered "securities."

In my view, the *Take Shape for Life* income scheme potentially can be seen as a violation of such laws. The law in the state of New York is an example.

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3. A chain distributor scheme shall constitute a security within the meaning of this article and shall be subject to all of the provisions of this article.

⁷ <http://www.ftc.gov/opa/2007/06/burnlounge.shtm>

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Fraud Discovery Institute blasts Medifast

Posted by [Tracy Coenen](#) on May 21, 2009 · [5 Comments](#)



In a surprise move, the company known for its outspoken criticism of the direct selling industry, the Fraud Discovery Institute, Inc today released a report portraying direct seller Avon Corporation in a positive light (www.frauddiscovery.net).

To prove that Medifast, Inc (NYSE:MED) is a “scheme pyramid” business opportunity as evidenced by its record breaking first quarter earnings in the middle of a recession, the Fraud Discovery Institute, Inc enlisted the help of nationally recognized expert Robert Fitzpatrick, who issued an 11 point comparison between Medifast and Avon showing Medifast comes up short. Some of the points that Mr. Fitzpatrick made included:

- Downlines are limited to 3 levels of recruiters at Avon. Medifast has 10 levels of downline recruiters. This is a huge distinction. It limits the potential for “kingpins” to develop that can control the business. It forces retail sales, since no one could make a lot of money merely on the personal purchases of a vast downline.
- The upline people receive a shrinking percentage of each sale as they rise in rank. At Medifast the upper levels get an increasingly larger piece of each sale. An upliner who is five levels away

from the sale can receive more on the sale than the person who actually makes the sale. At Avon, you make more only if total sales volume grows.

- Avon does not link the value of its product to making money from selling it. Medifast claims that success in losing weight includes having financial security and then offers its own sales rep work as the way to achieve that security. At Medifast, endless chain recruiting becomes what you sell, the central focus.

"So the big question remains, how does Medifast hit record earnings?" asks Barry Minkow. "The key is all in what they do not say, like how many of their 'coaches' fail and quit within one year's time, or how much does the average 'coach' earn annually, or finally how much of these record sales come simply from the personal use of the coaches? These are all questions any reasonable person is entitled to ask before jumping into a business opportunity," said Barry Minkow.

And while Medifast falls far short of Avon, they do compare well with the recently prosecuted multi-level marketing company YTB Travel which, according to the California Attorney General, must, as of July 1, 2009, disclose to all prospects several things including the average income of potential business building recruits (including expenses against that income) and the amount of money earned by the average person who joins to build a business. To emphasize the seriousness of these material non disclosures, the Fraud Discovery Institute, Inc, created a website especially for Medifast (www.medifraud.net), where various documents are posted to corroborate these assertions.

"The real reason Medifast resists transparency in the area of disclosing attrition and collapse rates is the material adverse effect it would have on these 'blow out earnings' as no one would intentionally and knowingly sign up for a doomed by design, endless chain business opportunity," added Minkow.

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5 Responses to “Fraud Discovery Institute blasts Medifast”

1. *anonymous* says:

23 May 2009 at 5:40 am

It's amusing that the automated Medifast Spam Blog picked up your item.

2. *Emma* says:

19 June 2009 at 12:12 am

Is this about their Take Shape for Life program with the health coaches? That's not the only way Medifast sells their product. I sell Medifast as an affiliate (they're on Commission Junction) so I never even talk to anyone and don't have to recruit anyone and don't have to buy the product either. Maybe I'm losing money on recurring sales, but I just can't be bothered with the MLM model and whatever "training" program is involved and/or mandatory purchases.

I would think the failure rate of their coaches is probably similar to Weight Watchers, who also recruit from their successful dieters.

But at any rate, I would think their "record sales" is coming from all of their sales outlets — which includes just regular affiliates, their website and I think they are in some stores now too.

Trackbacks

1. *Fraud Discovery Institute blasts Medifast | Sequence Inc. Fraud ... - Medifast | Medifast Weight Loss | Medifast Diet Plans* says:

21 May 2009 at 8:14 pm

[...] post: Fraud Discovery Institute blasts Medifast | Sequence Inc. Fraud ... Tags: breaking-first, business-opportunity, enlisted-the-help, fraud, fraud-discovery, institute, [...]

2. *Medifast and Take Shape For Life: Weight loss pyramid scheme? | Sequence Inc. Fraud Files Blog* says:

23 September 2009 at 6:56 pm

[...] this year, Barry Minkow and Fraud Discovery Institute railed on Medifast, a company with a weight-loss plan being marketed with a multi-level marketing plan. The company [...]

3. *Medifast multi-level marketing scheme called into question by expert : Sequence Inc. Fraud Files Blog* says:

12 January 2010 at 1:58 pm

[...] report is an update to a mid-2009 report issued by FitzPatrick. The full text of the current report is found here. And here is my analysis of Medifast and Take [...]

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Tracy Coenen is a forensic accountant and fraud examiner in Chicago and Milwaukee who investigates white collar crimes, including cases of financial statement fraud, embezzlement, tax fraud, and insurance fraud. She is the author of **Expert Fraud Investigation** and **Essentials of Corporate Fraud** and more than 100 articles on fraud featured in industry publications.



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5 Points of Similarity Between Medifast and YTB (YourTravelBiz.com)

Posted by [Tracy Coenen](#) on May 21, 2009 · [1 Comment](#)

1. Both Medifast (NYSE:MED) and YTB International have 10 levels of commission payouts. That means on any given sale of actual products or services, the person selling it will receive a small commission, while 9 other levels will receive a total commission exceeding the seller's commission.
2. Medifast and YTB both have seemingly "low" startup costs, with fees of \$300 and \$400 respectively. Yet this fee looks far more significant when compared to the minimal fee of \$10 charged by Avon to new business builders. In reality, charging each new recruit several hundreds of dollars to join can add millions to the company's bottom line each year.
3. Neither Medifast nor YTB have disclosed the average income for one of their coaches or business builders. YTB will now start disclosing this in July 2009 pursuant to a settlement with the California Attorney General, but apparently believed in the past that potential recruits didn't need to know such things.
4. Medifast and YTB both do not disclose their "churn rates." They purposely do not disclose the number of people recruited during the year or the number of people who quit the business during the year, effectively concealing the failure rates for recruits.
5. Neither Medifast nor YTB disclose the amount of revenue the company receives from actual retailing of products or services, versus how much revenue is actually derived from recruits who are

personally consuming the products or services. This is an important distinction because revealing such numbers would show a potential recruit the true market for sales to third party, bona fide customers.

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5. [Medifast continues to mislead shareholders](#)



Comments

One Response to “5 Points of Similarity Between Medifast and YTB (YourTravelBiz.com)”

1. *Frank Thomas* says:
13 January 2010 at 12:13 pm

Kudos to Robert for his continued work.

Tracy, keep up the good work. Us oldtime consumer advocates (I am 73) get great real satisfaction knowing another generation will carry the torch

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Tracy Coenen is a forensic accountant and fraud examiner in Chicago and Milwaukee who investigates white collar crimes, including cases of financial statement fraud, embezzlement, tax fraud, and insurance fraud. She is the author of **Expert Fraud Investigation** and **Essentials of Corporate Fraud** and more than 100 articles on fraud featured in industry publications.



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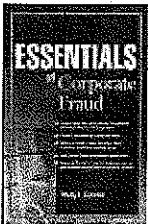


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EXHIBIT 14



info@frauddiscovery.net

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For Immediate Release

Title: Non Profit Consumer Advocate Group teams up with FDI; files formal complaint against Medifast, Inc (NYSE:ME) with law enforcement

Sub title: FDI to roll out You Tube video interviews of past Medifast, Inc (NYSE:MED) "coaches" who enrolled in the business opportunity only to conclude it was an endless chain

Friday, May 22nd, 2009 San Diego, CA

Pyramid Scheme Alert Founder and nationally recognized expert Robert Fitzpatrick released a copy of a letter he authored that was sent to various law enforcement agencies yesterday that was also signed by Fraud Discovery Institute, Inc Co-Founder Barry Minkow (www.frauddiscovery.net). The letter essentially establishes irrefutable points of similarity between Medifast, Inc and YTB and essentially establishes that if applied consistency, the same result experienced in the YTB case would apply to Medifast, Inc (NYSE:MED).

The points of similarity between the 2008 prosecution of YTB and Medifast, Inc. and forwarded to law enforcement were first reported in a release by FDI earlier this week and include the following:

1. Both identify themselves as "multi-level marketing" companies that offer all consumers an "income opportunity" based upon selling their product and recruiting other consumers into the business opportunity.
2. Both companies charge a fee of hundreds of dollars for the opportunity to earn income from reselling the income opportunity.
3. Both employ 10-levels of pyramid recruiters, which grants enormous financial leverage to the top recruiters while dooming the latest recruits to positions of loss unless they are able to build their own "downline" of new consumer/investors.
4. Both employ an "endless chain" incentive to consumers for investing in the business and purchasing the products. Regardless of market size and saturation in any given area both companies promote continuous and unlimited recruitment of more sales people.
5. Both utilize pay plans that drive endless chain recruiting activity over retail sales. The plans pay more to the recruiters than the retailers and apply payment formulas that transfer the greater share of total payments to the top levels of the pyramid.
6. Both companies showed remarkable growth in the midst of an economic downturn and within respective industries and product sectors that are contracting. Such dramatic upturns under these conditions are classic red flags.



info@frauddiscovery.net

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The Fraud Discovery Institute, Inc also announced that they will begin profiling stories of past "coaches" of Medifast, Inc who attempted to succeed in the business opportunity but failed because of the endless chain, pyramid compensation plan that rewards recruitment over retailing. "Google is wonderful tool" said Barry Minkow, Co-Founder of the Fraud Discovery Institute, Inc. "When people who want to join Medifast, Inc first "Google" the company, YouTube will pop up and the potential recruit will be educated from those with first hand experience about how much money they did not make with a business opportunity that boasts of a potential "\$8,000 to \$20,000 per month in income."

By allowing past recruits to tell their story, FDI hopes to 'level the playing field' for the potential Medifast, Inc recruit.

EXHIBIT 15



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For Immediate Release

Title: Former SEC Division of Enforcement lawyer sites potential independence and conflict of issues problems between Medifast (NYSE:MED) and their independent, outside auditors in four-page letter to Commission

Sub Title: Expert's letter sites possible stock-touting of Medifast (NYSE:MED) stock by company's single-officed, New Jersey based, outside auditors through their alleged independent investment entity. Expert also notes that PCAOB cited Medifast auditors for significant deficiencies in three of six audit engagements reviewed by them, or 50% of audits in their sample.

June 9th, 2009 San Diego, CA

Is the Medifast, Inc (NYSE:MED) independent auditor moonlighting as the company's stock promoter to investor clients? That appears to be the conclusion of a six-week investigation conducted by the Fraud Discovery Institute, Inc who today released several documents (www.frauddiscovery.net) including a letter from Michael Brown, who in addition to working in the SEC Enforcement Division served as the General Counsel for three nationwide securities broker-dealers which uniquely qualifies him to identify alleged impropriety and conflicts of interest issues.

According to the letter by securities expert Michael Brown and other evidence just released on a web site specifically dedicated to the Fraud Discovery Institute's almost year-long investigation of Medifast, Inc (www.medifraud.net), Medifast's outside accountants, Bagell, Josephs & Levine & Company, LLC, have over the past three years (http://bagelljosephs.com/abt_partners.html), also operated BJL Wealth Management, LLC (<http://bjlwealth.com/new/bjlwealth/gate.asp>) at the same address of the audit firm and have many of the same partners in both firms.

The investigation revealed that BJL Wealth Management, LLC recommended the purchase of Medifast stock to an operative of the Fraud Discovery Institute, Inc, which appears to cross the line of independence according to Mr. Brown, who asserts that "*If such conduct is indeed occurring, then it would appear that BJL's independence as MED's outside auditor has been compromised.*"

Other evidence just released includes a recent and now resolved PCAOB (Public Company Accounting Oversight Board) letter of concern (http://www.pcaobus.org/Inspections/Public_Reports/2008/Bagell_Josephs_Levine.pdf) and the various recent dismissals of Bagell Josephs Levine & Company, LLC by certain clients (please see http://www.google.com/search?sourceid=navclient&ie=UTF-8&lz=1T4HPIC_enUS315US315&q=%2b%22bagell+josephs%22+%2bdmissed).



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The Fraud Discovery Institute, Inc has forwarded their findings to the newly appointed Director of the Division of Enforcement at the SEC, Mr. Robert Khuzami. According to Barry Minkow, Co Founder of the Fraud Discovery Institute, Inc "This is a disturbing finding and one that seems to pass the test of 'the appearance of impropriety'. In a post Enron/Sarbanes-Oxley environment, for an independent, outside auditor that is in this case the corroborator of Medifast's recent blow-out earnings-- which has subsequently induced massive public investment thus dramatically increasing Medifast's stock price-- to apparently have a stake in the game is troubling."

EXHIBIT 16

Summary Explanation of BJL Oddities

Bagell Josephs Levine & Company, LLC appears to operate solely from 406 Lippincott Drive, Suite J, in Marlton NJ 08053. The principal service of the firm is that of certified public accountants. The firm has registered with the Florida Department of Business and Professional Regulation (DBPR) under license number AD0019680 (expires 12/31/2009), however, no Florida address was found. The address shown in the DBPR database is the Marlton (NJ) address shown above. The partners and professionals of the firm include:

- Carl H. Bagell (Managing Partner)
- Neil Levine
- Marc G. Nochimson
- Glenn M. Josephs
- David Firestone
- Ciro Adams

Interestingly, although database information suggests that the firm is small in size, according to information in government databases, the firm sponsored one H1B visa application in 2007, and twelve H1B visa applications in 2008. No information was found which might explain the firm's need for such a large number of foreign workers. The Scientology Critical Information Directory lists the firm under the category of "Scientology-linked?" with the designation of "Yes".

Operating from the exact same address in Marlton (NJ) is the firm of BJL Wealth Management LLC. The principals of this latter firm ("Listed on the "Our Team" page of their website) include:

- Matthew Bagell
- Sam Brand
- Carl H. Bagell
- Charles Holmes

Based on information received, Carl H. Bagell utilizes the social security number 18X-XX-XXXX, and he was born in 08/1952. Matthew Bagell utilizes social security number 15X-XX-XXXX, and he was born in 10/1981. Because of the age difference between the parties, it is believed that the two individuals are father and son.

In a recent report issued by the Public Company Accounting Oversight Board (PCAOB), dated June 19.2008, copy attached, after completing an inspection of the Bagell accounting firm, the Board identified "what it considered to be audit deficiencies". The report went on to state that, "The deficiencies identified in three of the audits reviewed included deficiencies of such significance that it appeared to the inspection team that the Firm did not obtain sufficient competent evidential material to support its opinion on the issuer's financial statements."

EXHIBIT 17

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Conflict of interest for Medifast auditors?

Posted by [Tracy Coenen](#) on June 24, 2009 · [2 Comments](#)

Last week Barry Minkow and Fraud Discovery Institute released a report regarding the independence of the auditors of Medifast Inc. (NYSE:MED). The company is audited by Bagell, Josephs, Levine & Company. The audit partner happens to also be a part of BJL Wealth Management, an investment firm with the same address as the audit firm.

This becomes interesting when you consider that BJL Wealth Management recommended the purchase of Medifast stock to an operative of FDI. Is this a conflict of interest? It may be. Does the audit partner, in his role at the investment firm, make recommendations regarding Medifast stock? Does he have any financial interest in transactions involving Medifast stock? If the answer to either of these questions is yes, then the audit partner would have compromised his independence.

An auditor working in the capacity of an investment advisor does not automatically give rise to independence issues. In fact, over the last ten years, the accounting powers that be were recommending that CPAs get involved in selling investments to generate additional revenue in their practices. However, when conducting an audit, the CPA has to draw a very clear line and not make recommendations regarding the buying or selling of securities of an audit client. The CPA also must not have any financial interest in the buying or selling of that stock. (i.e. He can't receive any income from the sale of securities of an audit client, even if it was someone else in the investment firm making the sale or recommendation.)

Another interesting factoid uncovered by FDI ... The PCAOB inspected six audits done by Bagell, Josephs, Levine, and found significant audit deficiencies in HALF of them. That's a pretty bad hit rate.

Interesting links:

FDI's website detailing its investigation of Medifast – <http://www.medifraud.net>
Sam Antar suggests Medifast should change auditors –
<http://whitecollarfraud.blogspot.com/2009/06/compelling-reasons-for-medifast-to.html>
Bagell, Josephs & Levine & Company – http://bagelljosephs.com/abt_partners.html
BJL Wealth Management – <http://bjlwealth.com/new/bjlwealth/gate.asp>

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3. [Medifast multi-level marketing scheme called into question by expert](#)
4. [BusinessWeek story about Enron's lawyers](#)
5. [Medifast and Take Shape For Life: Weight loss pyramid scheme?](#)

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2 Responses to “Conflict of interest for Medifast auditors?”

1. *Davis Freeberg* says:
24 June 2009 at 11:47 am

If this is true, it's a pretty big deal. How are public shareholders supposed to have confidence in the numbers when the auditors have a financial incentive to make sure that things appear rosy. Was this conflict at least disclosed in their 10-K filings or is this something that they've been trying to keep quiet?

2. *Medifast Blog* says:
4 September 2009 at 8:59 pm

if it is a solid investment, if the company in question was some other company other than medifast and BJL would make the same recommendation, then i dont see any conflict of interest. but if it was other way around, then there is something to think about

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• About the Author



Tracy Coenen is a forensic accountant and fraud examiner in Chicago and Milwaukee who investigates white collar crimes, including cases of financial statement fraud, embezzlement, tax fraud, and insurance fraud. She is the author of **Expert Fraud Investigation** and **Essentials of Corporate Fraud** and more than 100 articles on fraud featured in industry publications.



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 - Doo Dilly: It's actually a black and white issue. There may be a few...

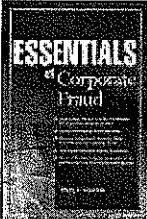


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Medifast and Take Shape For Life: Weight loss pyramid scheme?

Posted by [Tracy Coenen](#) on September 14, 2009 · [7 Comments](#)

Earlier this year, Barry Minkow and Fraud Discovery Institute [railed on Medifast](#), a company with a weight-loss plan being marketed with a multi-level marketing plan. The company was built primarily through marketing of the weight loss program through physicians. The Medifast executives realized that the MLM structure was their golden opportunity.

Why is multi-level marketing such a cash cow for the owners and executives of companies like these? Because product and service sales become largely irrelevant. The company instead markets the “opportunity” for making extra money and achieving financial freedom. ([Almost no one is able to actually achieve either of these](#) when they sign up to sell MLM junk, but that’s beside the point. Get people to believe it’s **possible**, and you’re golden.) Recruit people into the MLM, require “minimum purchases” from each to continue to “qualify” in the pyramid, and you are likely going to have exponential growth for the company.

Once Medifast realized there was a chance to make gobs of money via the multilevel marketing model, they focused on that and the company’s earnings have reflected this successful strategy.

With the help of MLM expert Robert FitzPatrick, [Barry Minkow demonstrated how a pyramid scheme like Medifast’s Take Shape For Life program works](#). (And this company isn’t alone with this method of marketing. Plenty of other companies use it. [One such company is YTB](#), which got [nailed by regulators for being a pyramid scheme](#).)

Another financial expert is criticizing Medifast for promoting their alleged pyramid scheme. David Hamilton at BNET has written two articles on Medifast and Take Shape For Life (TSFL). The second really focuses on the pyramid scheme aspect.

He raises some excellent points. The weight loss industry as a whole has suffered greatly thanks to the economy. Big declines in revenue are hitting companies like Weight Watchers International and Nutrisystem. How then, can Medifast be doing so well? For the six months ended June 30, 2009 Medifast reported revenue of \$74.4 million, an increase of 41% over the prior year, according to the company's earnings release.

The answer could be that the company's program is much better than others. There's no objective data that supports that contention however.

There are zillions of diet pills, programs, and meal plans out there. Why is Medifast so successful of late? The growth isn't coming from the physicians who promote the program or the weight loss centers that offer products and service. The success is in the Take Shape For Life unit (the MLM arm of the company), which accounted for 58% of revenue in 2009. In contrast, this part of the company contributed only 33% of the revenue in 2009. TSFL alone had a 96% increase in revenue in 2009 over the prior year.

But maybe the MLM part of the company is so successful because it works so well for the "coaches" recruited into the program? We'll never know for sure, as Medifast doesn't disclose how much money the coaches are making, how much they spend on expenses of the business, what their attrition rates are, or how many recruits are actively selling or recruiting.

Take Shape For Life, however, makes it clear that to make real money, you have to recruit new people into the plan. This is where the allegations of being a pyramid scheme come in. Like all other MLMs that I've looked at, the product or service isn't really the focus. It's simply the bait to get someone in and make the company look legitimate. The real focus, however, is the recruiting of new marks into the scheme.

So the company's products haven't been proven to be stellar. The traditional outlets for the products are not doing well. And the MLM portion of the company is booming, even though there's no evidence that the products themselves are actually selling well. Everything points to the real deal being endless chain recruitment into a pyramid scheme.

Related Posts

1. [Medifast multi-level marketing scheme called into question by expert](#)
2. [More on the endless chain recruitment scheme of Medifast and Take Shape For Life](#)
3. [5 Points of Similarity Between Medifast and YTB \(YourTravelBiz.com\)](#)
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7 Responses to “Medifast and Take Shape For Life: Weight loss pyramid scheme?”

1. Lauren says:

12 January 2010 at 7:07 pm

I am a TSFL client. As far as it being a fraud well, I've tried other weight loss programs and this is the best by far (free or cost). The first awesome thing about it is the coaching system. It is so great to have someone who actually cares about my progress and encourages me to stay the course as often as I need them. I don't pay for their services just the food. The second thing I love about it is the food. I am so busy a busy mom of 6 so having my daily proteins, carbs, and AND daily vitamens already prepackaged for me takes a load off. I just add water and microwave or turn on the blender. If I'm away I have bars or shakes that I can take with me. Third it's a simple system that's honest to the client. They forewarned me that the first 3-5 days was hard. Yes the food is a bit more then I would normally spend but I think I'm worth the investment. Also as I transition (coach guided) off the diet I purchase less food. Until I am eating mostly regular food, but smaller portions 6 times a day of healthy food. As far as the coaches getting more people into the program I think that's awesome! Most of our country is fat and out of shape, and so many have diabetes or heart disease which the food was actually designed for. People with diabetes/heart disease live healthier lives when on the program. My opinion? If someone can lose weight, be healthy, and help others to be healthy why shouldn't they be compensated? Are you telling me every doctor, lawyer, or accountant got into their field simply for to help people. Of course that's not true or these people would drastically lower their fees. Health coaches in Beverly Hills, New York, and Hollywood charge huge fees for their services. TSFL Coaches need to be rewarded for their time and effort. I don't compensate my coach for his services TSFL does...and I'm glad!

As far as our economy, people are still spending money on what they want. Think goodness they want to be healthy.

2. Tracy Coenen says:

13 January 2010 at 10:48 am

Lauren – I don't think anyone has suggested the products are bad or don't work. And no one has suggested that people shouldn't get paid for selling the products. QUITE THE CONTRARY. The people making the "real" money (and there are very, very few of those) aren't making money from selling the products. They're making money by recruiting people with the promise of riches. That's the problem.

3. *Lauren* says:

13 January 2010 at 12:09 pm

Hi Tracy,

The word "opportunity" is not the same as the word "promise". Do you have anything that TSFL has written or said stating that they promise whoever coaches will get rich? If you do I'd like to get the link. I honestly think that so many people are looking for an easy way out, get quick rich scheme. That they see the upside of something and just think it's going to happen overnight. As you obviously know success requires hard work and may take years to obtain. There are so many who just aren't willing to sacrifice that much work, train themselves, wait, or how about this one....change. We can know that because those at the top are few and those at the bottom unfortunately are many. Human nature is like water, it takes the path of least resistance. I wonder how many people go into anything hoping for a quick turn over and when it doesn't happen they get disgusted and quit. I saw it in college, the military, and, my goodness, even Walmart and my neighborhood grocery has a high turn over rate.

I've been scammed before (at 22 yrs) by real pyramid schemes and it doesn't feel good. But I've learned to ask questions and discipline my self that anything worth doing is going to cost me . I've learned if something sounds to good to be true then get away from it. But I've also learned there are possibilities out there that may pay off and then again they may not. Hence the California gold Rush...few got rich but hey the country expanded. That's just life but if you don't have to sell your first born to try something go for it. Just being alive is a risk.
Have a great day!

4. *Ben* says:

22 January 2010 at 2:01 pm

Hi Tracy: Your comment, "They're making money by recruiting people with the promise of riches" is not accurate. I worked as a Health Coach for a year and the money came from selling food NOT recruiting people. As a Health Coach, you make very little from the people below you and you make nothing from signing people up. I had 13 coaches below me and they generated very little money for me or anyone above me. We all made a pretty good amount 20%-30% on the food we sold, just like any sales job. Here is link to the compensation plan right from the website: http://www.tsfl.com/pdfs/TSFL_CompensationPlan.pdf There is nothing to hide. I hope this helps you understand the business model. Ben

5. *Tracy Coenen* says:

22 January 2010 at 6:33 pm

Ben – I understand the business model just fine, and you actually proved my point. They recruit with PROMISES of riches, but almost no one makes a living wage in TSFL. You couldn't possibly sell enough of those meals to make a living. And you made almost nothing from recruiting, although that's not what you'll be told when you're recruited.

MLMs are NOT just like any sales job. They're presented that way, but it's just not how it is. Imagine if grocery stores had sales people who went out and tried to sell food person-to-person.

Could the salesperson make a living doing that? Of course not. That's why having YOU retail food is just idiotic.

The bottom line is that Medifast is making money hand over fist from these recruiting activities, but the people being recruited are making next to nothing.

6. *Gina Scalise says:*

30 January 2010 at 8:47 am

Tracy,

I have to but in on this conversation. I am a client of TSFL my family has lost a total of 200 lbs in less than 3 months. We have tried many programs and have never had this success. This being said, no one has ever approached me or my family members to get rich and become a coach. There is no pressure to sell anything or join anything. My doctors office has been signing up their patients to obtain optimal weight. Who cares who is making the money, it is a program that is very easy to follow and is saving peoples lives from a lifetime of obesity and unhealthiness. I have been on every program out, and this is by far is the only one I can say my family will follow for the rest of our lives. I have also been involved in many mlm companies. TSFL doesn't have to promise financial rewards the program speaks for itself. I am going to become a coach to help my friends and family become healthy. By no means did anyone promise me financial success of freedom. I will keep my job and this will be my contribution to a very unhealthy, overweight community. There will always be those individuals who join one mlm after another, make a killing and move on. This is one mlm that should be for individuals who really care about people not money. You will always find the few opportunists that will promise anything to make a buck. They hit pay dirt because the program sells itself without any promises. It is just plain simple it is a great plan that really works and can become a leader in weight control.

7. *Clay says:*

4 February 2010 at 2:11 pm

Hi Tracy – my wife and have lost 110 lbs between us in 6 months. I have gone from a size 40 waist to a size 34 in those 6 months. No promise to get rich was made and only a curserary mention of “oh by the way, if you are interested you can get income by being a coach and helping other people.” No heavy handed recruiting. So now my wife is a coach. What’s wrong this this? Isn’t this how businesses are supposed to work in a free country? Additionally, the cost of the product without the coaching is exactly the same as the cost of the product with the coaching...because Medifast knows that “with coaching,” the success rate of the diet goes up dramatically. After having tried South Beach, Akins and a host of other diets...this one worked! Your article makes TSFL sound like a Bernie Madoff scheme where greedy little men in penthouses are taking money from unsuspecting dupes who, in the end, are left bankrupt. Those onlything TSFL took from me is 53 lbs and 6 inches. And I am happy to pay them for that.

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Tracy Coenen is a forensic accountant and fraud examiner in Chicago and Milwaukee who investigates white collar crimes, including cases of financial statement fraud, embezzlement, tax fraud, and insurance fraud. She is the author of **Expert Fraud Investigation** and **Essentials of Corporate Fraud** and more than 100 articles on fraud featured in industry publications.

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